

SUBDIVISION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between

\_\_\_\_\_  
\_\_\_\_\_  
*(list full legal names of all owners of record, state of incorporation if incorporated, type of partnership if a partnership, or marital status if individual)* hereinafter referred to as the "Owner", and the TOWN OF BLACKSBURG, Virginia, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "Town",

W I T N E S S E T H:

WHEREAS, the Owner owns a certain parcel of land located in the Town, hereinafter referred to as the "Property", having acquired the same by instrument(s) of record in the Clerk's Office of the Circuit Court of Montgomery County, Virginia, in Deed Book(s) \_\_\_\_\_, page(s) \_\_\_\_\_; and

WHEREAS, the Property is being subdivided by the Owner into the subdivision known as

\_\_\_\_\_  
and the owner has caused a plat of subdivision, dated \_\_\_\_\_, to be prepared by \_\_\_\_\_, which plat the Owner desires to admit to record in the Clerk's Office of the Circuit Court for Montgomery County, Virginia, hereinafter referred to as the "Plat"; and

WHEREAS, the Owner agrees to construct on or before the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, *(same date as Construction Duration period as stated on the Construction Inspection Development Project Form)* all physical improvements, hereinafter referred to as the "Improvements", shown on the development plans labeled “ \_\_\_\_\_”, dated \_\_\_\_\_ and approved by the Town on \_\_\_\_\_ and such other plans and specifications for development of the subdivision approved by the Town, all of which documents are on file in the Town's Department of Planning and Engineering, are incorporated by reference, and are hereinafter collectively referred to as the "Plans";

WHEREAS, the owner has submitted to the Town herewith (*circle one of the following*) sufficient letter of credit, cash, or a certified check, in the amount of \$\_\_\_\_\_ hereinafter referred to as the "Surety", securing the timely construction and completion of the Improvements and performance of the terms and conditions of this Agreement; and

WHEREAS, the owner has submitted to the Town herewith (*circle one of the following*) sufficient cash or a certified check, in the amount of \$\_\_\_\_\_ hereinafter referred to as the "Construction Inspection and Testing Fee", securing the timely construction inspections and testing of all public improvements as set forth in Construction Inspection Development Project form dated \_\_\_\_\_, and approved by the Town on \_\_\_\_\_.

WHEREAS, the Town has agreed that it will approve the final plat of said subdivision and authorize its recordation upon the execution of this Agreement.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

1. The Town agrees that, upon proper execution of this Agreement by the Owner and receipt of the Surety, Construction Inspection and Testing Fee, and receipt of the deeds described in Paragraph 8 below, it will approve the Plat for recordation. If the Surety is a letter of credit, it must be in the form attached as Exhibit A and completed in conformance with the instructions attached thereto, approved by the Town Attorney as to form, content and issuing institution, and acceptable as to amount, effective period, and otherwise to the Director of Planning and Engineering. Letters of credit shall be in effect for a minimum period of sixty (60) days beyond the date for completion of the Improvements.

2. The Owner agrees that the owner will, without cost to the Town, on or before the \_\_\_\_\_ day of \_\_\_\_\_ construct and complete the Improvements to the satisfaction of and to the standards and specifications of the Town and all other governmental agencies or authorities having jurisdiction over the Improvements.

3. The Town may enter upon the Property to complete the Improvements and may draw on the Surety in the following events:

- a. The Owner fails to complete the Improvements by the date specified in paragraph 2 above.
  - b. The Owner fails to complete by the date specified in paragraph 2 above the Improvements to the satisfaction of and to the standards and specifications of the Town and all other governmental agencies or authorities having jurisdiction over the Improvements.
  - c. The Owner fails to commence construction of the Improvements at least \_\_\_\_\_ days prior to the date specified in paragraph 2 above.
  - d. The insolvency of, appointment of a receiver for, or the filing of a voluntary or involuntary petition in bankruptcy against or by the Owner.
  - e. The commencement of a foreclosure proceeding of a lien against the Property or its conveyance in lieu of foreclosure.
  - f. Owner breaches any of the terms and conditions of this Agreement.
4. In the event that the Town draws on the Surety, it may use such funds to complete the Improvements or cause them to be completed. The Owner shall be liable to the Town for any and all costs of completing the Improvements that shall be in excess of the Surety. It is the purpose and intent of the parties that the amount of the Surety shall have been determined to be sufficient to defray not only the anticipated cost of completing or having completed the Improvements but also unanticipated cost overruns, the cost incurred by the Town in drawing on the Surety, an administrative fee in the amount of \$5,000.00, or five (5) percent of the amount of the cost of completing the Improvements, whichever sum is greater, and any and all other reasonable costs which the Town has incurred or may conclude, in its sole discretion, are to be incurred. The Owner hereby acknowledges that an administrative fee in the above amount is reasonable compensation to the Town for its costs in drawing on the Surety and, when necessary, causing the Improvements to be completed.

The Owner acknowledges and agrees that the Town is under no obligation to give any notice to the Owner of its intent to draw on the Surety in any of the events specified in this Agreement.

5. The Town shall, upon drawing on the Surety, deposit the same in an interest-bearing account to the extent not needed to cover expenditures made or reasonably anticipated to be made in the

near future, but the Town shall have no responsibility to deposit or maintain any of such funds in an account at the maximum interest available. Upon completion of the Improvement as determined by the Town, and payment of all expenses incurred by the Town in connection therewith, any unexpended funds, including any interest earned thereon, shall be returned to the Owner.

6. The Town shall not be liable to the Owner or to any third party for the manner in which the Improvements are completed, any delay in effecting completion, the fact that the cost of completion is in excess of or less than the amount made available by drawing on the Surety or any part thereof, or that the Town has drawn down the entire amount of the Surety even though it subsequently develops that the entire amount was not required to carry out the provisions of this Agreement.

7. The Owner acknowledges that the Town is under no obligation to extend the time herein provided for completion of the Improvements by the Owner. However, in the event that the Town unilaterally agrees in writing to do so, such writing shall, without more and without formal execution of any other agreement by the parties, constitute such an extension, and all of the terms of this Agreement shall continue in effect for the duration of such extension insofar as they are not inconsistent with the terms of the extension; provided, however, that no extension shall be effective until or unless the Owner furnishes to the Town a new or amended Surety, and a Construction Inspection and Testing Extension form and additional payment, acceptable to the Town if requested by the Town. The Town may require that the amount of the Surety be increased if an extension is permitted.

8. The Owner agrees to execute and to deliver to the Town a deed of easement, approved as to form by the Town Attorney, conveying to the Town those easements identified on the Plat as easements running to the Town. The Owner also agrees to execute and to deliver to the Town a deed, approved as to form by the Town Attorney, conveying fee simple title, with general warranty, to the Town those areas, such as pump station sites or well lots, that are to be conveyed to the Town, and to provide the Town at owners' expense an owner's title insurance policy issued by a company acceptable to the Town Attorney, containing no exceptions as to title which are not acceptable to the Town Attorney, and in such amount as may be determined reasonable and appropriate by the Town Manager.

9. It is mutually understood and agreed that if the Owner shall faithfully execute all requirements of this Agreement and all relevant laws and regulations, and shall indemnify, protect and save the Town, its officers, agents and employees harmless from all loss, damage, expense or cost by reason of any claim made or suit or action instituted against the Town, its officers, agents or employees on account of or in consequence of any breach on the part of the Owner, all of which the owner hereby covenants to do, then the aforementioned Surety shall be released by the Town to the owner; provided, however, that release of the Surety shall not in any way or to any extent release, diminish or otherwise reduce any obligation or liability of the Owner provided in this Agreement.

10. The Owner does further hereby agree to indemnify, protect and save the Town, its officers, agents, and employees harmless from and against all losses and physical damages to property, and bodily injury or death to any person or persons, which may arise out of or be caused by the construction, maintenance, presence or use of the streets, utilities and public easements required by, and shown on, the Plans and the Plat until such time as the said streets, utilities and public easements shall be accepted as a part of the Town's systems.

11. It is mutually understood and agreed that approval of the Plat shall not, by such approval alone, be deemed to be an acceptance by the Town or other applicable agency of any street, alley, public space, sewer or other physical improvements shown on the Plat or the Plans for maintenance, repair or operation thereof, and that the Owner shall be fully responsible therefor and assume all of the risks and liabilities therefor, until such time as the Town or other applicable agency has formally accepted them.

12. Upon completion of the Improvements, the Owner shall apply to the Subdivision Agent for final inspection of them and approval for acceptance. After approval of the Improvements by the Agent, Surety shall be maintained for an additional period of one year in the amount of five (5) percent of the cost of the Improvements. During this one year period, owner shall correct any defects in materials or workmanship in the installation of the Improvements. In the event Owner fails to do so after being requested to do so by the Town, the Town may draw on the Surety in order to affect such corrections.

13. The Owner shall, with regard to any Improvement to be conveyed to the Town or any agency thereof:

a) When requested by the Town, furnish the Town permanent, blackline, reproducible "as built" drawings of such Improvement on 0.003 inch polyester film, in a form satisfactory to the Town; and

b) Notify the Subdivision Agent prior to the conduct of any required test or final inspections of the Improvement; and

c) Furnish, through Owner's engineer, test reports prepared by an independent testing laboratory in accordance with the ACI Code for any structural concrete installed in the subdivision, and furnish a manufacturer's certification that all pipe installed in the subdivision meets applicable ASTM specifications; and

14. The Owner warrants that there are no deeds of trust of record pertaining to the Property other than the ones identified below:

Amount of Deed of Trust	Note Holder	Date of Deed of Trust	List all Trustees	Deed Book, Page
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1.

2 .

3 .

15. The Owner shall be entitled to periodic partial and final complete release of the Surety pursuant to and if Owner complies with provisions of Blacksburg Subdivision Ordinance 4-604, as amended, and, in the case of a partial release, furnishes the Town with new Surety in the reduced amount, in the case of a bond.

16. This Agreement shall be binding upon the owner and the Owner's successors and assigns.

17. Owner agrees, upon notification in writing by the Town at any time after recordation of the Plat, that if an error has been discovered in such Plat, to record, at Owner's expense, an amended or corrected Plat, or other document acceptable to the Town, to correct the error.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals:

OWNER:

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

TOWN OF BLACKSBURG

By: \_\_\_\_\_  
Director, Planning and Engineering

Approved as to form:

\_\_\_\_\_  
Town Attorney

(PUT ON BANK LETTERHEAD)

IRREVOCABLE LETTER OF CREDIT NO. \_ (1) \_  
(2)

Town of Blacksburg  
P. O. Box 90003

Blacksburg, Virginia 24062-9003

Re: (3) (13)

Gentlemen:

We hereby establish our Irrevocable Letter of Credit No. \_ (1) \_ in your favor, for the account of \_ (3) \_ available by your drafts drawn at sight on us up to the aggregate amount of \_ (4) \_ each such draft accompanied by the following document:

Your written statement certifying that \_ (3) \_ has defaulted in the performance of the terms and conditions of \_ (5) \_ Agreement with you, dated the \_ (6) \_ day of \_ (6) \_ , 20 \_ (6) \_ and that you are, in consequence, entitled to the amount of the accompanying draft.

All drafts drawn under this letter of credit must be marked "Drawn under \_ (7) \_ Letter of Credit No. \_ (1) \_ dated \_ (2) \_".

This credit is valid until \_ (8) \_ and drafts drawn hereunder, if accompanied by document as specified above, will be honored if presented on or before that date to \_ (9) \_ at \_ (10) \_ or, if said bank is not doing business at that address, then to any other address or location of said bank or its successor.

Except as otherwise expressly stated herein, this credit is subject to the "Uniform Customs and Practice for Documentary Credits", fixed by International Chamber of Commerce Publication No. 400, 1983 revision.

Sincerely,

\_ (7) \_  
By: \_ (11) \_  
\_ (12) \_



- (1) Number assigned to letter of credit by bank.
- (2) Date issued.
- (3) Name of person, corporation, or partnership submitting letter of credit.
- (4) Amount of letter of credit written in words and numerals, i.e., Fifty thousand and no/100 dollars (\$50,000.00).
- (5) Insert "his", "her", "its" or "their", as appropriate.
- (6) Date shown on agreement.
- (7) Name of bank.
- (8) Expiration date of letter of credit.
- (9) Name and address of bank.
- (10) Address of bank or branch thereof where letter of credit is to be presented. No letter of credit will be acceptable unless it may be presented at a bank office in Montgomery County, Giles County, Pulaski County, Floyd County, Roanoke County, the City of Roanoke, or the City of Radford, Virginia.
- (11) Signature of authorized officer of bank.
- (12) Title of authorized officer of bank.
- (13) Name of project.